

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION I

CACR 06-987

April 11, 2007

JUSTIN MCKEOWN
APPELLANT

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT
[CR-2004-928]

V.

H O N O R A B L E P A M E L A
HONEYCUTT, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

SARAH J. HEFFLEY, Judge

A jury found appellant Justin McKeown guilty of residential burglary, aggravated robbery, and possession of a controlled substance. On appeal, appellant argues that the trial court erred in denying his motion for directed verdict with regard to the residential burglary and aggravated robbery charges, because the State failed to prove appellant had the requisite intent to commit either offense. We hold that appellant's argument is not preserved for our review and therefore affirm the judgment of conviction.

Appellant was charged with aggravated robbery, possession of a controlled substance, residential burglary, terroristic threatening, and theft in connection with a robbery that took

place in September 2005. Appellant, along with two other men, allegedly entered an apartment and robbed the five occupants at gunpoint, taking money, cell phones, and a small amount of methamphetamine. At the trial on the matter, appellant made a motion for directed verdict at the close of the State's evidence and again at the close of all the evidence, both of which were denied.

The State ultimately dropped the charges of theft and terroristic threatening and submitted jury instructions on the three remaining offenses. The jury found appellant guilty of all three offenses, and the court sentenced appellant to ten years' imprisonment on the aggravated robbery charge, five years' imprisonment on the residential burglary charge, and three years' imprisonment on the possession of a controlled substance charge, to be served concurrently. A timely appeal to this court followed.

On appeal, appellant argues that the State failed to prove that appellant entered the apartment with the intent to commit an illegal act, which is an element of both residential burglary, under Ark. Code Ann. § 5-39-201(a)(1) (Repl. 2006), and aggravated robbery, under Ark. Code Ann. § 5-12-103(a), and therefore the trial court erred in not granting his motion for directed verdict. Arkansas Rule of Criminal Procedure 33.1 provides, in pertinent part:

(a) In a jury trial, if a motion for a directed verdict is to be made, it shall be made at the close of the evidence offered by the prosecution and at the close of all the evidence. *A motion for directed verdict shall state the specific grounds therefor.*

. . . .

(c) The failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required...will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. *A motion for*

directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense.

Ark. R. Crim. P. 33.1 (a) & (c) (2006) (emphasis added). It is well-settled that to preserve an issue for appeal from a decision on a motion for directed verdict, the issue must be stated clearly and specifically to the circuit court. *Pinell v. State*, 364 Ark. 353, ___ S.W.3d ___ (2005). The reasoning underlying this holding is that when specific grounds are stated and the absent proof is pinpointed, the circuit court can either grant the motion or, if justice requires, allow the State to reopen the case and supply the missing proof. *Id.* A further reason that the motion must be specific is that this court may not decide an issue for the first time on appeal. *Id.*

In this case, appellant's counsel made the following directed-verdict motion at the close of the State's evidence:

Your Honor, the State has rested and the defendant now moves for a directed verdict on all charges. I think the strongest point that I have for a directed verdict is on the terroristic threatening. As the Court knows, for terroristic threatening there have to be some type of verbal threats from the defendant. And in this case the testimony was that Mr. McKeown said to get down, but the threats about the killing came from the other defendant. So move for a directed verdict on the terroristic threatening. And then on the other four charges we would move for a directed verdict on insufficiency of the evidence.

The circuit court denied the motion, and the defense then presented additional evidence.

At the close of the defense, appellant's counsel renewed his motion: "Your Honor, at this time the defendant would renew his motion for directed verdict on all three charges

[aggravated robbery, residential burglary, and possession of a controlled substance] due to the insufficiency of the evidence.” The court again denied the motion.

The motion at the close of the State’s evidence was specific in part as to the terroristic threatening charge, but this charge was later dropped and is not at issue on appeal. The second part of the motion relating to the remaining charges was a general challenge to the sufficiency of the evidence, with no specific argument as to flaws in the State’s case or elements of the crimes that had not been proven. The motion made at the close of all the evidence is also a general challenge to the sufficiency of the evidence with no specific grounds cited. Our case law has established that Rule 33.1 is strictly construed. *Pratt v. State*, 359 Ark. 16, 194 S.W.3d 183 (2004). Appellant’s directed-verdict motion was non-specific; therefore, it is not preserved for this court’s review.

Affirmed.

GLOVER and ROBBINS, JJ., agree.
